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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 6, 1997

Thomas Boasberg
Legal Advisor to Chairman Reed Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

RE: CC Docket 96-98

Dear Mr. Boasberg:

Thank you for meeting with Linda Oliver and I last Friday to discuss the use of unbundled network element ("UNE") shared interoffice transmission facilities ("shared facilities") to provide local and interexchange services. During that meeting you asked for our legal and economic analysis regarding the use of UNE shared facilities to provide exchange access service to ourselves and to other interexchange carriers. This issue goes to the very heart of several of the fundamental principles underlying both the Telecommunications Act of 1996 and the Commission's Local Competition Order. WorldCom strongly believes that it would be an egregious error for the Commission to reverse the pro-competition course that it set in the Local Competition Order by restricting unnecessarily a requesting carrier's ability to use an UNE to provide a telecommunications service.

The Telecommunications Act of 1996 is extremely clear on the question of whether an interexchange carrier can use unbundled network elements to provide exchange access to itself and to others.¹ Section 251(c)(3) states that an incumbent local exchange carriers has the "duty to provide, *to any requesting telecommunications carrier for the provision of a telecommunications service*, nondiscriminatory access to network elements . . ." In its August 1, 1996 Local Competition Order, the Commission correctly interpreted this to mean that "section 251(c)(3) permits interexchange carriers and all other requesting telecommunications

¹ In fact, the issue of interexchange carriers use of UNE shared facilities to provide exchange access was so clear that it did not generate any requests for reconsideration nor was it challenged in court. The only question that arose regarding this issue came in a Petition for Clarification submitted by WorldCom involved the rate structure to be applied rather than whether it could be done at all. See, Petition for Clarification of WorldCom, Inc., In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, September 30, 1996 at 8.

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carriers, to purchase unbundled elements *for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves* in order to provide interexchange services to consumers." Local Competition Order at ¶356 (emphasis added). The Commission also found that allowing carriers to use unbundled elements to provide originating and terminating toll services is consistent with the purposes of the Telecommunications Act, stating that "Congress intended the 1996 Act to promote competition for not only telephone exchange services and exchange access services, but also for toll services." Id. at ¶361.

The Commission adopted several rules to implement these principles. Section 51.307(c) of the Commission's rules thus provides that an incumbent LEC shall provide a requesting carrier with access to UNEs "in a manner that allows the requesting telecommunications carrier to provide *any telecommunications service* that can be offered by means of that network element." 47 C.F.R. §51.307(c)(emphasis added). The Commission's rules also prohibit an incumbent LEC from imposing "limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends." 47 C.F.R. §51.309(a). Further, the rules explicitly state that a "*telecommunications carrier purchasing access to an unbundled network element may use such network element to provide exchange access services to itself in order to provide interexchange services to subscribers.*" 47 C.F.R. §51.309(b)(emphasis added).

In addition to these general rules, the Commission also adopted rules that make it abundantly clear that shared facilities between an incumbent LEC's end office and tandem are unbundled network elements. Among the specific unbundling requirements adopted by the Commission, the incumbent LECs must provide nondiscriminatory access to "interoffice transmission facilities." 47 C.F.R. §51.319(d). The rules define interoffice transmission facilities as "incumbent LEC transmission facilities dedicated to a particular customer or carrier, *or shared by more than one customer or carrier*, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers. 47 C.F.R. §51.319(d)(1)(emphasis added). The rules further require a the incumbent LEC to "[p]rovide a requesting telecommunications carrier . . . use of the features, functions, and capabilities of interoffice transmission facilities shared by more than one customer or carrier." 47 C.F.R. §51.319(d)(2)(i). In addition, tandem switching capability is also a specifically required unbundled network element. 47 C.F.R. §51.319(c)(2).

Shared interoffice transmission facilities between incumbent LEC end office switches and tandem switches are clearly network elements that incumbent LECs are required to unbundle and to which the incumbent must provide nondiscriminatory access to requesting telecommunications carriers. Requesting telecommunications carriers can use this UNE to provide any telecommunications service, including exchange access to themselves. If the Commission reverses the position it took with regard to shared facilities in the Local Competition Order, its action will be contrary to the express language of the Telecommunications Act of 1996 and will undercut the fundamental principles upon which the

Local Competition Order was based. The Commission should be looking for ways to expand the use of unbundled network elements to promote telephone exchange and exchange access competition rather than striving to limit the use of an unbundled network element.

WorldCom understands that there has been concern expressed that permitting carriers to use UNE shared facilities to self provide access could result in less switched access revenue for the incumbent LECs if interexchange carriers replace tandem switched transport purchased out of access tariffs with UNE shared facilities and tandem switching purchased at a cost-based rate pursuant to an interconnection agreement. WorldCom believes that this concern is vastly inappropriate and grossly overstated.

First, the concern over the impact on an incumbent LECs revenues is irrelevant to whether UNE shared facilities can legally be used to provide access. When Congress established the requirement that the rates for network elements be cost-based, it understood that the ensuing competition would mean less revenue for the incumbent. It can fairly be said that a requesting carrier's use of any cost-based unbundled network element to provide a telecommunications service will ultimately mean less revenue for the incumbent LEC. Yet Congress said, and the Commission's rules confirm, that any requesting telecommunications can purchase and use any unbundled network element to provide any telecommunications service. Congress did not add "unless it deprives the incumbent LEC of revenue."

Second, the amount of revenue that an incumbent LEC could *potentially* lose if interexchange carriers use UNE shared facilities and tandem switching to replace tandem switched transport does not appear to be significant. Data that WorldCom previously submitted to the Commission indicates that the 1998 impact on Ameritech if all of its tandem switched access minutes were converted to UNEs would be just over \$27 million -- or 1.1% of its total 1998 interstate price cap revenues. *And that is if 100% of the tandem switched traffic shifts from access to UNEs -- an extremely unlikely scenario.* Results in the same range can be anticipated for the other incumbent LECs.

If interexchange carriers using UNE shared facilities and transport switching were also able to avoid paying the transport interconnection charge ("TIC"), the result changes but not substantially.²

The attached analysis shows that the total potential 1998 revenue reduction for Ameritech from carriers using cost-based UNEs instead of tandem switched access transport, and avoiding the TIC, would be \$57.4 million, or 2.3% of Ameritech's total price cap revenues. Again, this assumes that 100% of Ameritech's tandem switched access minutes shift to UNEs. The potential impact on LEC revenues is not so significant as to justify undermining the principles of the Telecommunications Act of 1996 or the Commission's Local Competition Order.

² WorldCom is not certain that the TIC can be "avoided" in this manner but has supplied this analysis at your request.

Moreover, restricting the ability of requesting telecommunications carriers to use UNE shared facilities and tandem switching to provide tandem switched transport service to themselves because of incumbent LEC revenue concerns would be highly discriminatory. Applying the same TIC avoidance analysis to dedicated transport demonstrates that users of dedicated facilities that convert from access to UNEs could avoid \$96 million of the TIC, or 3.8% of Ameritech's 1998 interstate price cap revenue -- a far greater amount than the total potential impact from tandem switched transport.

If the Commission is concerned about revenue impact on the incumbent LECs, the Commission should not simply say that interexchange carriers cannot use UNEs to replace tandem switched access transport nor should it undercut the basic principles of the Telecommunications Act of 1996. The far better solution would be for the Commission to revisit, and modify if necessary, some of the rules in other more proceedings that have created these problems. Such an approach would allow the Commission to avoid tinkering with the fundamental underpinnings of the Telecom Act.

I hope that this information is helpful. Please do not hesitate to call me if I can provide any additional information.

Sincerely,



Richard L. Fruchterman, III
Director of Government Affairs

Attachment

cc: James Casserly
Paul Gallant
Kathleen Franco
William Caton, Secretary (two copies)

**Maximum Potential 1998 Ameritech Revenue Reduction if
UNE Shared Facilities are used to replace
Access Common Transport**

Estimate of Tandem Switching Revenue Reduction¹

| | |
|--|-----------------|
| Revenue Reduction ² | (\$27,133,817) |
| Total Interstate Price Cap Revenues ³ | \$2,520,240,399 |
| Percent Reduction | 1.1% |

Estimate of TIC Avoidance Impact

| | |
|---|--------------|
| Pre July 1, 1998 | |
| TIC Revenues | \$97,712,952 |
| % Tandem Switched MOU | 24.0% |
| Tandem Switched MOU TIC Revenues | \$23,451,108 |
| Post July 1, 1998 | |
| TIC Revenues ⁴ | \$28,366,634 |
| % Tandem Switched MOU | 24.0% |
| Tandem Switched MOU TIC Revenues | \$6,807,992 |
| Total TIC Avoidance Impact ⁵ | \$30,217,045 |

| | |
|--|------------------------|
| TOTAL POTENTIAL 1998 REDUCTION | \$57,392,917 |
| Estimate of 1998 Price Cap Revenues | \$2,520,240,399 |
| % Total Potential 1998 Reduction | 2.3% |

¹ See, WorldCom Ex Parte, CC Docket 96-98, June 27, 1997.

² Access revenues lost minus interconnection revenues gained. Assumes 100% shift from access tandem switched transport to UNE shared facilities. Impact is overstated because the UNE and access rate structures will differ for the first half of the year, increasing the cost of UNE shared facilities relative to access tandem switched transport. Analysis also does not include any non-recurring charges Ameritech may seek to impose.

³ Includes estimated \$138,692,635 Price Cap Reduction to take effect on July 1, 1998.

⁴ Assumes \$138,692,635 TIC reduction (same as 1997).

⁵ In 1999, the TIC Revenue Impact will be under \$7 million as Ameritech eliminates the TIC on July 1, 1999.